STATE SUPERVISION FOR CITIES.

"Home rule for cities" is sometimes advocated on the plea that a city is not a public but a business corporation. The latter is based on a contract between the incorporators and the State, which cannot be granted, altered or revoked without the consent of the corporation, except where such power is reserved or the charter is judicially forfeited. A public corporation, on the contrary, is a branch of government, created for public and social purposes to facilitate the administration of government. It is not a contract, and "the power of the legislature over such corporations is supreme and transcendent; it may, where there is no constitutional inhibition, erect, change, divide or even abolish them at pleasure, as it deems the public good to require." *

Whatever may have been its position in the time of the mediæval guilds, in our day, a municipality is not a private or merely business corporation. It possesses the powers of eminent domain, taxation, legislation for the protection of life, property, health; it affords poor relief, furnishes free education, and enforces its regulations through the courts and the police. It is based on the compulsory principle of sovereignty, and not the voluntary principle of free contract. Its functions are public and not private, political and not mercantile, and, therefore, the legislature, representing the sovereignty of the people, should have sovereign control over the city.

But legislative interference with municipal politics works serious evil. The time of legislators is diverted from general to special laws. The legislature is overrun and controlled by city bosses and the lobbies of saloon-keepers, gamblers and corporations. The cities themselves are governed by an irresponsible outside authority; † municipal

* Dillon, "Municipal Corporations," Vol. I, p. 93.

† Goodnow, "Comparative Administrative Law," Vol. I, p. 224.

politics are identified with State and Federal politics; the feeling of local independence and responsibility on the part of the voters is destroyed.

The principle of legislative control is sound, but plainly the legislature itself is not in a position to exercise that control. Home rule, however, is not the sole alternative. The cities of Missouri, California and Washington are, it is true, empowered to form and adopt their own charters, * but in the first two States there must be a subsequent ratification by the legislature. In Washington ratification is not required, but there can be no doubt that in case of conflict between municipal and general laws the courts would sustain the latter, and therefore the legislature would continue to control the cities, as it does in other States, through the judiciary.

The example of foreign cities, especially those of Germany, has been frequently cited on behalf of the movement for home rule. But foreign cities are neither as democratic as ours, nor do they really possess the powers of local sovereignty demanded in America. If the "three-class" system of Berlin, giving, as it does, the control of the city to only the very wealthiest of the property owners, were operative in New York, the city would be governed by probably less than five per cent of its present voting population. Such a government could be trusted with autonomy, so far as economy and efficiency are concerned; indeed, it would be a government based on the principle of private business corporations instead of that of political corporations. Even in England and France the suffrage does not reach out to the loafer, pauper and semi-criminal class as it does in the United States. And still further, in no foreign city can there be found the heterogeneous alien population which in many American cities furnishes a majority of the voters. The ignorant, foreign, unpropertied and corrupt elements

*See "Home Rule for Our American Cities," by E. P. Oberholtzer, ANNALS, Vol. III, p. 736, May, 1893.

are as yet too powerful in America to be trusted with unrestricted local rule.

Though foreign cities do not feel the hand of the legislature, yet they are placed under a far more effective control —that of the state central administration. In France, with the widest suffrage among the great nations of Europe, this central control is carried to the extreme, the government of Paris being administered by two appointees of the President of the Republic. In lesser cities, where the mayor is elected by the council, he, as well as all other officers, may be removed or suspended by the prefect of the department, who is in turn the appointee of the President. The only parallel to this in America is the government of the city of Washington, where even the extreme centralization of France is exceeded, since not even an advisory council can be chosen by the residents of the city. Congress enacts all laws for the city, but the entire administration is in the hands of three commissioners appointed by the President of the United States. Washington furnishes a bright contrast to the gloom of American city politics; its government is strong, efficient, honest and progressive, but it is also irresponsible, undemocratic, and paternal. It cannot be contemplated for other cities.

In Germany the fullest powers of self-government are given to cities but the central administration always retains the right to veto the choice of officials, and there are very important organs for inspection and appeal. The main advantage of administrative over legislative control is there well exhibited. Such control being always ready for action is seldom compelled to act. For this reason the mistake is sometimes made of assuming that German cities are subjected to no state control. In Berlin the state authority (*Oberpräsident*) appointed by the sovereign has extensive powers. Not only may he insert items in the budget and collect taxes to meet the same if the council should refuse, but he may even dissolve the council and order a new election.

During the interval commissioners appointed by the Minister of the Interior manage the local government. But, notwithstanding this most extended right of control, "no occasion for its intervention arises," * since the *Oberpräsident* who is always at hand, is always consulted before action is taken on important matters, and thus any conflict is avoided.

In England the Local Government Board is an important wheel in the government of cities. Its president is a member of the cabinet, sits in parliament, and receives a salary. The Lord President of the Council, all the Secretaries of State, the Lord Privy Seal and the Chancellor of the Exchequer are *ex-officio* members. The work is done by the president and salaried officials, who are financiers, medical men, architects, engineers, and other specialists holding office on permanent tenure. This board was created in 1871 by the union of the poor-law board with that of public health. Its functions are: (1) To advise local authorities and parliament. All local and special legislation to be presented to parliament must first pass under the inspection of the board, whose recommendations are usually adopted by parliament. In America this class of laws consumes one-half to two-thirds of the time of our legislatures and results in endless log-rolling. (2) The board is given complete administrative and financial control over poor law and sanitary authorities extending even to the removal of officers and the administration of local affairs by a temporary commission with power to levy and collect taxes. The educational department of the privy council has similar power over local school boards. Over municipalities proper the Local Government Board has a direct control only in the more important financial transactions. The board prescribes forms and particulars for returns to be made yearly by town clerks, giving the receipts and expenditures of the municipal corporations. These returns are published and laid before parliament. Throughout

* Report of Mr. Coleman on the Municipal Administration of Berlin, Foreign Relations, Executive Documents, Vol. I, 1881–82.

the entire Municipal Corporation Act of 1882 the existence of the Local Government Board is recognized as an essential part in the constitution of city governments. The following facts illustrate its financial control: In 1892 the board sanctioned several hundred separate loans of municipal corporations and urban sanitary authorities to the aggregate amount of £7,967,975, fixing the dates of repayment at ten to thirty years, and granted eighty-two "instruments" approving of transactions such as "sales and leases of corporate property, exchange and purchase of land, appropriation of land, the application or investment of moneys arising from the sale of land, and the appropriation of the proceeds of the transfer of government stock or annuities." The careful supervision given by the board in the matter of indebtedness, is indicated by the following passage from the Annual Report to Parliament for 1892-93:* "It has been our practice to provide against any diminution of the municipal inheritance by requiring the sum advanced to be repaid within a certain number of years, with interest, from the fund or rate on which the expense would otherwise have fallen. The sums thus repaid, as well as other capital moneys payable to corporations in respect of the sale of land or similar transactions, have generally been required by us to be invested in government annuities. In some instances the disposal of property has been in consideration of perpetual annual ground rents; and in others we have not inserted in our instrument approving of the alienation of the property any instructions as to the appropriation of the proceeds, the latter being reserved for subsequent directions."

It may be thought that, with the central control limited to only one or two features of municipal finances, the cities of Great Britain are models of local sovereignty; yet when it is remembered that the expensive departments of poor relief, sanitation and education, which are under complete administrative control, are not combined with the municipal

* Page xxix.

government proper, but are organized as separate corporations, and that the police and judiciary are effectually subordinated to central authorities, it will be understood that to only an insignificant portion of municipal government in England is vouchsafed the questionable boon of unrestricted home rule.

In the United States there has been a variety of experiments in State administrative supervision and control over local authorities, especially in the matters of health, charities, prisons and taxation. The movement is as yet but tentative. Local officers are treated with consideration. Little is asked from them, less is commanded, and almost nothing is enforced through the effective agencies of penalties, suspensions and removals. But the nature of the movement is worthy of attention and it may reveal hopeful possibilities.

The earliest and most essential State control is that exercised by State boards of health. The Iowa law of 1880 is typical. The governor appoints the State Board of Health which consists of the attorney-general (by virtue of his office), one civil engineer and seven physicians, who receive no salaries. The board in turn appoints a salaried secretary who must be also a physician. It has authority to make rules and regulations and sanitary investigations, and it is "the duty of all police officers, sheriffs, constables, and all other officers of the State, to enforce such rules and regulations, so far as the efficiency and success of the board may depend upon their official co-operation." The mayor and aldermen, who act as the board of health in incorporated cities, are required to enforce the regulations of the State board. In Indiana the law goes still further and provides a penalty for disobedience, which may not exceed $100 upon first conviction before a court or jury, but to which, upon second conviction, imprisonment for ninety days may be added. In case of epidemic the State board may take entire charge of the local health administration.

State boards of charities and corrections have been called

into being expressly to overcome the indifference, ignorance, corruption and brutality of local officers in the care of the poor, and also to aid in the control and administration of the State charitable and penal institutions. Previous to the creation of these boards, county almshouses were almost everywhere in the condition of the Albany City Almshouse, described by Mr. Letchworth,* as notorious for "utter indifference to sanitary laws, promiscuous association of young and old of both sexes, disregard of the rules of common decency, brutal treatment, dirt, cold, foul air, putrid meat, insufficient clothing." The failure of uncontrolled local government in poor administration had become profound and dangerous. To-day wherever State boards have been established, these conditions no longer exist. In the words of General Brinkerhoff, Chairman of the Ohio Board: "Substantially everything in the way of progress in the development of our charitable, correctional and benevolent institutions has originated with the Board of State Charities, and hardly a year has passed in which a step forward has not been taken in legislation through its influence."

These boards are now established in eighteen States. Their organization, powers and duties are widely different. It is not possible to enter here into a detailed comparison of the different boards, but as a result of the widely different experiments, the following conclusions† appear to be substantially agreed upon by the leading students and administrators of charities and corrections. The members should be appointed by the governor, from the two leading political parties, for a term of six to eight years. A long term gives opportunity for knowledge, experience and a continuous policy, while reducing the influence of politics. There should be from five to nine members, the governor of the State acting as *ex-officio* president, in order to increase its influence and the force of its recommendations to the legislature.

* Twenty-sixth Annual Report, State Board of Charities of New York, 1892.
† Stated by Mr. Letchworth in the New York report already cited.

Members should receive no compensation except for actual traveling expenses. The secretary should be appointed by the board and should receive a salary fully commensurate with the ability required, and the responsibility of his work. He is the expert of the board, usually a high authority on questions of charity and penology, and should be liberally supplied with clerical help.

It is quite evident that in the fundamental matter of taxation where local divisions are called upon to make common contributions to State expenses there must be direct State administrative control over the local taxing authorities. Otherwise localities are able by undervaluation to escape their fair portion of State taxes. To meet this evil and also to furnish a board of appeal for aggrieved taxpayers, as well as a board of assessment for certain classes of corporate property, twenty-five of the American States have created State boards of equalization and assessment. As agencies for equalizing taxes these boards have been unsatisfactory because their task is an impossible one. Yet in this and other things they have achieved some success, and, since scarcely two boards are constructed in the same way, a comparative study throws considerable light upon the best methods of selection. Probably the most inefficient board in the country is that of Illinois, where the board is composed of one member from each congressional district, elected by popular vote. The board which can show the best results since its creation in 1891, is that of Indiana, consisting of five members, the governor, auditor and secretary of state *ex officio*, with two salaried commissioners appointed by the governor, from different political parties, for a term of four years. The latter members, perform the expert administrative work of the board, while the *ex-officio* members give it high standing and authority. The duties of the board are to prescribe forms of assessment books and blanks for township and county assessors, to construe the tax and revenue laws of the State; to see that assessments of property are

according to law; to have original jurisdiction in assessing railroad property; to see that all taxes due to the State are collected; to enforce penalties upon violation of revenue laws; to study different systems of taxation and to recommend changes to the legislature. Its powers are far-reaching. It may subpœna and examine witnesses; administer oaths; demand access to books or papers of any corporation; fine persons who disobey subpœnas; receive and decide appeals from county boards of review. In the assessment of railways it is bound by no statutory rules, and its powers are discretionary. In the first year of its existence it raised the valuation of railways from $69,000,000, as established hitherto by the thousand township assessors of the State, to $160,000,000, an increase of 130 per cent. This startling result, and incidentally the comprehensive powers of the board, have been recently sustained in a notable decision by the Supreme Court of the United States.

Coming yet more closely to the question in hand, the States of Minnesota, North Dakota and South Dakota have provided an officer, the public examiner, whose duty is the direct supervision of certain local authorities. These are the only States in the union which have taken any steps in this direction. The experiment, so far as it goes, shows decidedly good results, and should be brought to the attention of the law-makers in other States. Minnesota is the pioneer in the movement, her statute having been enacted in 1878, while the Dakotas copied the Minnesota act upon their admission to statehood.

The Minnesota law of 1878 provides that a public examiner shall be appointed by the governor, who shall be a skillful accountant and who shall have power to examine the accounts of State institutions, State and county officers, and banking institutions. As respects county officers, it is made his duty to enforce a correct and uniform system of bookkeeping, to expose erroneous systems, to ascertain the character and financial standing of bondsmen, and to approve or

reject such sureties, to personally visit at least once a year said officers without notice to them, and to make a thorough examination of their books, accounts, vouchers, assets, securities, bondsmen, commissions, fees, charges. Where county officers neglect or refuse to obey his instructions the attorney-general is, on application, required to take action to enforce compliance. Reports are made to the governor who may suspend or remove* county officers for malfeasance or non-feasance in the performance of official duties.

The biennial reports of the examiner present a vivid picture of the need for such an officer, of the difficulties encountered and of the increasing benefits of the law. County officers were found to be derelict in their duties, books and accounts were confused, bondsmen were lacking, public funds were yielding large interest payments to the private purses of treasurers, several commissioners, auditors and sheriffs were receiving unusual and illegal fees, money was being paid out without warrants and received without records, besides numberless petty irregularities. Most of these evils were corrected within a few years, notwithstanding the fact that the examiner has never been granted adequate clerical help. In 1878 only seventeen counties received interest on public funds, to the amount of $7000. In 1886 fifty-seven counties received $29,000. This item alone recompenses the State beyond the expenses of the examiner's office. In the early years of the statute the examiner secured the suspension of several county officers for incompetence and malfeasance. "The salutary effect of these removals," says the report of 1880, "has reached far beyond the offenders immediately concerned. There has been a general toning up of officials to resist the incipient encroachments upon the treasury which are the sure foundation of future troubles."

Not the least important result of the office has been the information given to the legislature and the public upon the defects of the laws governing county officers. Several of

*As amended by act of 1881.

the examiner's recommendations have been adopted, to the marked advantage of the public service, such as amendments governing the deposits of public funds, making the treasurer as well as other officers subject to suspension, giving the governor power to remove officers as well as to suspend them, providing legal forms for official bonds, and securing checks upon, and uniform entry of, all payments by the treasurer in the auditor's office.

The Minnesota law is by no means perfect, and the examiner has been unable, mainly by reason of insufficient appropriations, to fulfill all the possibilities of his position. The law extends to county officers only and should be extended to towns, townships and cities. Other duties are assigned to the examiner, especially the supervision of building and loan associations, State banks, the State treasury and State institutions. In recent years, the examiner has been giving his attention largely to the banks. The same is true of the examiners in the Dakotas.

The extension of the examiner's supervision to cities would very naturally occur to the student of American city government. On inquiry I learn from Mr. M. D. Kenyon, the public examiner of Minnesota, that a partial trial has already been made in the city of St. Paul. He writes: "In regard to the extension of this office over city governments, I have to say that in 1891 the legislature by special enactment provided that this office should exercise its powers over the financial offices of the city of St. Paul. And while not providing for a complete audit of the business of the city, the financial plans of the various officers have been examined at considerable detail and some matters of irregularities have been gone into extensively and the public informed in regard thereto and corrections made where necessary. It would be entirely practicable to extend the jurisdiction of the office over municipal corporations by providing proper assistance.

"In the case of this city the expense was provided for in the act, to be paid for by the city at a sum not to exceed

$600 in any one year and not more than $6 per day for the time consumed in making examinations.

"As a matter of fact, the first examination cost something like $300, the second the entire sum of $600 (the examination covering a large amount of delinquent special taxes), the third $69. It is thought that generally the expense would not exceed in the future a larger sum than $100 per year. If the entire audit of the business were made for the year it would probably require the sum of $600 per year for a city of this size. If practicable, the plan of requiring corporations to pay expenses of examination would be the better one, the State paying the salary of the principal officer, and the amount contributed by the corporations being used in procuring clerical help, and the limitation of the amount required from each corporation being determined by the number of inhabitants.

"After having become thoroughly familiar with matters of each municipality, they could be systematized in the same manner as we have been enabled to systematize county affairs, and the expenses kept within reasonable limit, so that they would not be burdensome."

The opinion of Mr. T. E. Blanchard, the examiner of South Dakota, is also of interest. He says: "Minnesota and North Dakota have offices almost exactly similar to the public examiner in this State. I know of no other which embraces the same idea. The States very largely have some kind of supervision of banks. The plan of central control of counties and public institutions works admirably wherever tried. Besides systematizing the system of acts it saves many times the amount it costs. Much money could be saved to the public if something of the kind could be applied to city and township governments, as I believe there are more irregularities and defalcations in these than in counties, because the people have less access to them, and crookedness and mismanagement are more easily concealed."

Finally, experiments in civil service reform seem to indicate that if American cities are to rid themselves of the spoils system, they must call to their help the State administrative authorities. In European cities civil service regulations, examinations, appointments and removals are nearly all in charge of the heads of departments immediately concerned. The "Civil Service Commission" is unknown to their administrative economy. But in the United States where the heads of departments, both in federal and municipal politics are usually political officers in the partisan sense of that term, it has been found that if appointments are to be made on the basis of merit and efficiency they must be made under the supervision of a "non-partisan" board or commission. The operation of this principle in federal appointments is well known, but its application to cities has not proven a success. Philadelphia and Brooklyn have municipal commissions which are reported to be wholly unsatisfactory. But Massachusetts, apparently, has pointed the way to a successful merit system for cities. The Massachusetts Civil Service Commission is a State board. It has supervision over the appointments of officials in both State and municipal service. It consists of three commissioners appointed by the governor, for a term of three years, receiving $5.00 per day of actual service, though the work of the commission is mainly performed by a chief examiner and a secretary assisted by local registration clerks and examiners. Competitive and non-competitive examinations are held by the board, and certificates of eligibles are made to the heads of municipal departments on requisition by the latter. Three names are certified for one vacancy, four names for two vacancies, five names for three vacancies, and so on. Appointments can be made only from these certified lists, the heads of departments retaining, however, full power to discharge employes. The law applies to clerks, laborers, firemen, policemen and truant officers, but not to heads of departments or confidential appointees. The legislature almost yearly extends the

classified service, and cities may secure still further extension by petition to the commission. The results in Boston are increasingly satisfactory. That public service in the humbler positions is becoming more permanent is shown by the fact that the number of laborers discharged fell from 1116 in 1887 to 446 in 1893.

These experiments in central administrative control of local governments in the United States will recall to the student of English history the manner in which the present Local Government Board originated. Previous to the year 1871 separate and almost independent authorities exercised some control. The Poor Law Board was created in 1834. The Home Office, the Privy Council and the Board of Trade shared such control as existed over sanitation and local governments. The law of 1871 gathered together this scattered superintendence of local affairs into the hands of the Local Government Board. Paralleling this course of development it may eventually come about that American States will combine in one central board the disconnected functions of the several organs already described. But for the control of municipal corporations, which might well be extended to counties and townships, the following scheme is suggested:

Cities should be granted home rule and greater freedom from legislative interference, but not as unrestricted as that vouchsafed by the State of Washington. The legislature should not be deprived of the power of enacting general laws governing municipalities.

A State Municipal Board should be established. It should be composed of the governor, attorney-general, and auditor, by virtue of their offices, and from six to ten unsalaried citizens in equal numbers from the two principal political parties, one of whom should be appointed each year by the governor for terms of from six to ten years. If it should be thought wise in some States to make the board entirely non-partisan,—or rather bi-partisan,—the proposed *ex-officio* members might be dropped. The board should meet

monthly, but its administrative work would be done by salaried experts receiving good salaries and appointed to office by the board during its pleasure.

1. The duties of the board would be: *Supervisory* and not administrative. It should not have power to discipline, remove or suspend officers. Its only control over them should be to make recommendations to the governor, who in turn should have discretionary but plenary powers to suspend or remove such officers. In case of removal the ordinary local machinery of election or appointment should alone be called upon to fill the vacancy.

Two advantages would be gained by such limitations upon the power of the board. Having no official spoils to distribute, it would not become an object of political ambition, and it could not relieve local communities from responsibility for their own government.

2. An Auditing Department, composed of experts, should prescribe a system of municipal bookkeeping and should examine the books of city officers at any time, without notice. Full examinations and reports should be made at least annually, giving comparative standing of all cities in the more important financial items of expenditures, revenues, taxes, tax rate and debt.

3. A Civil Service Department should have charge of examinations and certifications for the civil service of cities, as in Massachusetts.

4. The approval of the board should be required for all bonds and contracts, and financial measures to insure the observance of the legal debt-limit, and to protect the city's interests.

5. The board should conduct local investigations of complaints and abuses similar to those now held by legislative committees, and should publish testimony and findings. The board should have full power to summon witnesses, administer oaths and inflict penalties for contempt.

6. It should report to the legislature a full account of the work of the board, pointing out with recommendations

for amendments any defects in the laws governing cities and prescribing the duties of officials. The advantages of this plan of administrative supervision may be briefly summarized.

1. The State Municipal Board is the *agent of the legislature*. It can be created without constitutional amendment. It is a recognition of the legislature's sovereign control over municipalities, but also of the legislature's inability to wisely exercise that control without expert advice. The annual and special reports of the board are the indispensable basis for accurate legislation. The temptation and excuse on the part of partisan legislators to interfere with local government because of alleged evils is removed.

2. Men of the highest character can be enlisted in the public service. This has been the case almost universally in State boards of charities. The unsalaried members of these boards are noted for their integrity and public spirit. It is in imitating their organization that we may hope to find a plan already tested and adapted to American conditions. The paid professional agents, the specialists and experts, appointed to perform the administrative duties of the municipal board would become the first authorities in their respective subjects to be found in the country. This is true to-day of the secretaries of our best State boards of charities and corrections, several of whom are world-wide authorities on both the scientific and practical sides of penology and charities. The State Municipal Board would provide a similar professional field for our highest practical authorities on city administration.

3. Administrative supervision reaches the *acts* of officials rather than their persons.* Unlike the legislature or the judiciary it is always ready to act. It precedes rather than follows. It *prevents* corruption rather than punishes it. Yet in the United States this control can be neither as centralized nor as powerful as in France or Germany. It must

* Compare Goodnow on Administrative Jurisdiction, in "Comparative Administrative Law," Vol. II, pp. 191-2.

be supervisory in character, and if local officers are to be removed or suspended, such power should be entrusted only to the governor, as in Minnesota.

4. It is in the power to make local investigations of corruption, excess of power, negligence and inefficiency, that the greatest strength of the board resides. The grant of this power recognizes the fact often cited, but not fully utilized, that ours is a government by public opinion. This is an extremely delicate kind of government, but at the same time thoroughly efficient if the proper organs are devised. Public opinion requires publicity. It is founded on knowledge. At present it works too often in the dark, because this knowledge is not timely, adequate, nor certain. Provide the machinery for furnishing the people with accurate, reliable, expert information, and they can then govern themselves.

Here again the State boards of charities and corrections have fully demonstrated this proposition. Suppose the charge is made, for example, that the wardens and officers of the State penitentiary are abusing the inmates, or that peculation exists in the management of the insane asylum. Formerly a partisan press took up the charges. The State institutions became the foot-ball for party politics. But now an investigation by the State board promptly informs the public upon the charges. If true, public opinion in all parties unites to enforce reform and remove the culprits from office. If untrue, the same public opinion stands by the authorities in charge, they are vindicated when most they need it, and they rest convinced that their merits and not their partisanship retain them in office.

Why will not similar machinery give similar results in city government? The Lexow investigation overthrew Tammany. Let us have a permanent Lexow committee in every State, ready to act when corruption is incipient, and not be compelled to wait till its only cure is revolution. Local responsibility can then be trusted.

Indiana University. J. R. COMMONS.